

FILED

MAY 15 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

JESUS GERARDO PEREZ-ZAZUETA

Defendant - Appellant.

No. 04-50300

D.C. No. CR-03-2114-NAJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Napoleon A. Jones, District Judge, Presiding

Submitted January 13, 2006
Pasadena, California^{**}

Before: SCHROEDER, Chief Judge, FRIEDMAN^{***} and FISHER, Circuit Judges.

Jesus Gerardo Perez-Zazueta appeals his conviction for making a false statement in a passport application in violation of 18 U.S.C. § 1542. In his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} Daniel M. Friedman, Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

application, he stated that he was a citizen of the United States. In support of that claim, and in opposition to the government's extensive documentary evidence that he was born in Mexico, Perez-Zazueta introduced the deposition testimony of a priest, Father Adolpho Chavez, who was 74 years old and had had a stroke. **[Pl. Br. 9]** Father Chavez testified that he "faintly recall[ed]" performing a baptism in September of 1971 in a house in Chula Vista, CA.

Perez-Zazueta argues that the following statement by the prosecutor in closing argument was improper: "This person, Reverend Chavez, has been coached. I think he has been taken advantage of. His physical and mental condition have been taken advantage of. That's why he remembers this." Because Perez-Zazueta did not object to these statements, we review them for plain error. *United States v. Rodriguez-Preciado*, 399 F.3d 1118, 1132 (9th Cir. 2005). We affirm.

The prosecutor's statement that Father Chavez "has been coached" was not improper, because it was based on a reasonable inference drawn from the evidence adduced at trial. *See United States v. Molina*, 934 F.2d 1440, 1445 (9th Cir. 1991).

The prosecutor did, however, improperly interject her personal opinion with the statements "I think he has been taken advantage of" and "[h]is physical and

mental condition have been taken advantage of.” Not only was there little to no evidence to support these claims, but “[a] prosecutor has no business telling the jury his individual impressions of the evidence. Because he is the sovereign’s representative, the jury may be misled into thinking his conclusions have been validated by the government’s investigatory apparatus.” *United States v. Kerr*, 981 F.2d 1050, 1053 (9th Cir. 1992).

We cannot say, however, that the prosecutor’s statements constituted plain error that would warrant overturning the conviction. The other evidence that Perez-Zazueta was born in Mexico was “overwhelming,” and in that situation there can be no reversal for plain error. *Johnson v. United States*, 520 U.S. 461, 470 (1997).

AFFIRMED.